

CHAPTER 75-03-11

PRESCHOOL EDUCATIONAL FACILITIES EARLY CHILDHOOD SERVICES

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75-03-11-01. Purpose. Repealed effective January 1, 1999.

75-03-11-02. Authority and objective. Repealed effective January 1, 1999.

75-03-11-03. Definitions. As used in this chapter:

1. "Aide" means any individual other than a teacher or one who works in a preschool educational facility under the supervision of a teacher or a director.
2. "Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a preschool educational facility under the guidance and supervision of the preschool educational facility operator.
3. "County agency" means the county social service board in the county where the preschool educational facility is located.
4. "Department" means North Dakota department of human services.
5. "Director" means an individual responsible for supervising and organizing program activities in a preschool educational facility.
6. "Emergency designee" means an individual designated by the facility operator to be a backup caregiver for emergency assistance or to provide substitute care.
7. "Facility operator" or "operator" means the individual or group who has the legal responsibility and the administrative authority for the operation of a preschool educational facility. The facility operator is the applicant for license or the licensee under this chapter.
8. "Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a preschool educational facility, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.
9. "Preschool educational facility" or "facility" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, which serves a child no more than three hours per day, offers early childhood services, and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility.
10. "Staff" or "staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the preschool educational facility.
11. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month.

12. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
13. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson for fire safety week, a McGruff, or Santa Claus person.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-04. Effect of licensing and display of license.

1. The issuance of a license to operate a preschool educational facility is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the preschool educational facility. The preschool educational facility may at no time admit a greater number of children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03

75-03-11-05. Denial or revocation of license.

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the licenseholder may continue the operation of the preschool educational facility pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code section 50-11.1-12.

3. The department may revoke a license to operate a preschool educational facility without first issuing a correction order.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-10

75-03-11-06. Provisional license.

1. The director of a regional human service center, in the director's discretion, or the director's designee, may issue a provisional license for the operation of a newly opened preschool educational facility or for a previously licensed preschool educational facility although the preschool educational facility fails to comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. Prominently state that the preschool educational facility has failed to comply with all applicable standards and rules of the department;
 - b. State that the items of noncompliance are set forth on a document available, upon request made to the operator;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears the same date of issuance as the provisional license, upon demonstrating compliance, satisfactory to the department, with all applicable standards and rules.
3. A provisional license may be issued only to an applicant who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the regional director of the human

service center or the regional director's designee and acknowledged in writing by the operator.

5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department shall not issue a provisional license if the facility is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall prominently display the provisional license.
8. The operator shall provide parents notice that the facility is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-07. Application for and nontransferability of preschool educational facility license. An application for a license must be submitted to the county agency in the county in which the facility is located.

1. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only on the premises indicated on the license. A new application for a license must be filed by a licensed facility upon change of operator or location.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08. Duties of preschool education facility operator.

1. The operator of a preschool educational facility is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:
 - a. Establishment of the preschool educational facility program;
 - b. An application is made for a license for each preschool educational facility operated;

- c. Creation of an outline of a written plan and policies for the operation of each preschool educational facility;
- d. Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the preschool educational facility and of any staff changes;
- e. Liability insurance for bodily injury and property damage for the preschool educational facility;
- f. Formulation of written policies and procedures relating to:
 - (1) Hiring practices and personnel policies for staff;
 - (2) Methods for obtaining references and employment histories;
 - (3) Methods of conducting staff performance evaluations; and
 - (4) Children's activities, care, and enrollment; and the responsibilities and rights of staff and parents;
- g. Maintenance of required enrollment, attendance, health, financial, and related records;
- h. Responsibility for all preschool educational facility staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of director;
- i. The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;
- j. Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the preschool educational facility;
- k. Designation of a qualified director;
- l. That preadmission visits for children and their parents are offered in order that the preschool educational facility's program, fees, operating policies, and procedures can be viewed and discussed, including:
 - (1) An explanation of how accidents and illnesses may be dealt with; and
 - (2) Methods of discipline and developmentally appropriate guidance techniques to be used;

- m. That written agreements with the parents of each child specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
 - n. That the preschool educational facility is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - o. That written policies are established concerning the care and safeguarding of personal belongings brought to the preschool educational facility by enrollees or others on their behalf;
 - p. Parents are provided, upon request, any progress reports on their children and unlimited access and opportunities to observe their children while in care;
 - q. Parents are provided the name of the preschool educational facility's operator, the director, and the emergency designee;
 - r. The development of and compliance with a procedure for accountability when a child fails to arrive for the program;
 - s. That there is at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department. Substitute staff are exempted from this requirement; and
 - t. Carecheck information is made available to parents.
- 2. If the operator of the preschool educational facility is also the director, the operator shall also meet the qualifications of the director set forth in section 75-03-11-28.
 - 3. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.2, 50-11.1-08

75-03-11-08.1. Minimum qualifications of a preschool educational facility director.

1. A preschool educational facility director shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.
2. The director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
 - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a preschool educational facility or similar setting;
 - b. A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or fields directly related thereto, with at least six months of experience in a preschool educational facility or similar setting;
 - c. An associate degree in the field of early childhood development with at least six months of experience in a preschool educational facility or similar setting;
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year of experience in a preschool educational facility or similar setting;
 - e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto, with at least one year of experience in a preschool educational facility or similar setting; or
 - f. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, preschool educational facility, or similar setting.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08.2. Minimum qualifications of a preschool educational facility teacher.

1. A teacher shall be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge of teaching and working with young children.

2. The teacher shall have met at least one of the following qualifications:
 - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or fields directly related thereto;
 - b. A teaching certificate in elementary education or kindergarten endorsement;
 - c. An associate degree in the field of early childhood education;
 - d. Certification as a child development associate or similar status where such a local, state, or federal certification program exists; or
 - e. Certification from a Montessori teacher training program.
3. If the teacher is also the director, that individual shall meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-08.1.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-08.3. Minimum qualifications of a preschool educational facility aide. Each aide shall:

1. Be mentally, physically, and emotionally able to provide care and attention to the children in the aide's charge.
2. Meet one of the following qualifications:
 - a. A high school diploma; or
 - b. A high school equivalency.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-09. Staffing requirements.

1. The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, where necessary. Service personnel that are engaged in housekeeping and food preparations shall not be counted in the child and staff ratio for periods of time when they are so engaged.

2. The minimum ratio of caregivers or program staff to children in preschool educational facilities must be:
 - a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
 - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
 - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.
 - d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
 - e. There must be at least one director or teacher per group of ten children, if the group includes children two years old.
 - f. There must be at least one director or teacher per group of twenty children, if the group includes children three years old.
 - g. There must be at least one director or teacher per group of twenty-four children, ages four to six.
 - h. There must be one Montessori-certified director or teacher per group of thirty children enrolled in accredited Montessori programs.
3. If a child in care has a disabling condition, and which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.
4. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the facility.
5. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.

6. Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-10. [Reserved]

75-03-11-11. [Reserved]

75-03-11-12. [Reserved]

75-03-11-13. Minimum health and training requirements for staff.

1. Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.
2. Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A preschool educational facility operator who uses an untested emergency designee may not be found in violation of this provision.
3. If the physical or mental health of an operator or caregiver appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department. The department is not responsible for the costs of any required evaluation.
4. While children are in care, staff members shall not use or be under the influence of any alcohol or judgment-altering drugs.
5. All staff shall certify attendance at county-approved training related to child care annually.

- a. Staff working thirty to forty hours per week shall certify a minimum of thirteen hours of county-approved training annually.
- b. Staff working twenty to thirty hours per week shall certify a minimum of eleven hours of county-approved training annually.
- c. Staff working ten to twenty hours a week shall certify a minimum of nine hours of county-approved training annually.
- d. Staff working less than ten hours per week shall certify a minimum of seven hours of county-approved training annually.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-14. Minimum requirements for facility.

1. The preschool educational facility must be properly lighted. The following technical requirements must be met:
 - a. Sixty-five foot-candles of light for all general use and play areas;
 - b. Twenty-five foot-candles of light for all bathrooms;
 - c. Fifteen foot-candles of light for corridors and storage areas; and
 - d. Fifty foot-candles of light for any kitchen, laundry, and office areas.
 - e. If the lighting of the preschool educational facility appears questionable, the department or county agency may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.
2. Water supply.
 - a. The preschool educational facility must have a drinking water supply from an approved community water system or from a source tested and approved by the state department of health;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual single-service drinking cups; and

- c. The preschool educational facility must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does not exceed one hundred twenty degrees Fahrenheit [49.2 degreesCelsius].
- 3. Toilet and lavatory facilities:
 - a. Toilet and lavatory facilities must be provided and must be convenient to the areas used by the children and staff;
 - b. Toilet and lavatory facilities must meet requirements of the state department of health;
 - c. A minimum of one lavatory and one flush toilet must be provided for each fifteen children;
 - d. At least one handwashing lavatory must be provided per toilet room facility; and
 - e. Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories.
- 4. Sewage and wastewater disposal:
 - a. Any preschool educational facility not on a municipal or public water supply or wastewater disposal system shall have its sewage and wastewater system approved by the state department of health.
 - b. The preschool educational facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-02.1

75-03-11-15. Minimum standards for provision of transportation.

- 1. The provider shall establish a written policy governing the transportation of children to and from the preschool educational facility, if the preschool educational facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the preschool educational facility. If the preschool educational facility provides transportation, the

provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. If transportation is provided by a preschool educational facility, children must be protected by adequate staff supervision, safety precautions, and liability and medical insurance.
 - a. Child and staff ratios must be maintained to assure the safety of children while being transported.
 - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must comply with all relevant state and local laws.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07

75-03-11-16. [Reserved]

75-03-11-17. Fire inspections. Annual fire inspections must be completed by local or state fire authorities. Emergency plans must be developed in cooperation with authorities. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of the inspections with the county licensing agency.

1. The program must provide the following as approved by an appropriate fire official:
 - a. Approved smoke detectors placed as directed;
 - b. Fire extinguishers that bear approval ratings for 2A classification or better;
 - c. Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters;
 - d. At least two qualifying exits;
 - e. A boiler room door and frame with a one-hour fire rated enclosure if it faces an exit corridor; and

- f. A self-closing solid core door on any stairwells if the preschool educational facility is more than a two-story building.
2. Fire evacuation drills must be performed in accordance with the local fire department's guidelines.
3. The preschool educational facility shall be equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07

75-03-11-18. Minimum sanitation and safety requirements.

1. The preschool educational facility's bathroom lavatories, toilets, tables, chairs, and floors must be cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The preschool educational facility's building, grounds, and equipment must be located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and caregivers.
3. If meals are prepared, the state department of health shall conduct an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required.
4. Indoor and outdoor equipment, toys, and supplies must be safe, strong, nontoxic, and in good repair. All toys must be easily cleanable and must be cleaned and sanitized on a routine basis.
5. There must be adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. During the heating season when the preschool educational facility is occupied by children, the room temperature may not be less than sixty-eight degrees Fahrenheit [20 degrees Celsius] and not more than seventy-four degrees Fahrenheit [23.33 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.
6. Exterior play areas in close proximity to busy streets and other unsafe areas must be contained, fenced, or have natural barriers to restrict children from those unsafe areas.

7. Potential hazards, including cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may not be accessible to children.
8. Indoor floors and steps must not be slippery or have splinters. Steps and walkways must be kept free from accumulations of water, ice, snow, or debris.
9. Elevated areas such as stairs or porches must have railings and safety gates, where necessary to prevent falls.
10. All heating devices must be approved by the local fire authorities.
11. The preschool educational facility operator shall take steps to keep the preschool educational facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool educational facility.
12. Combustible materials must be kept away from light bulbs and other heat sources.
13. Exit doorways and pathways may not be blocked.
14. All preschool educational buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, must have these surfaces repainted or must submit evidence that the surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
15. Wading pools used by the preschool educational facility must be strictly supervised and emptied and cleaned daily.
16. All swimming pools must be approved by the local health unit.
17. All pets present in the preschool educational facility must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the preschool educational facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.

18. Smoking is not permitted in any preschool educational facility at any time during which a child who receives early childhood services from that preschool educational facility is present and receiving services.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02.2, 50-11.1-04

75-03-11-19. Minimum requirements regarding space.

1. Each preschool educational facility shall provide adequate space for all children in attendance.
2. The preschool educational facility shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the preschool educational facility at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-20. Program requirements.

1. A preschool educational program must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
2. The curriculum must promote intellectual, social, emotional, and physical development of children in care.
3. The curriculum must be based on the developmental levels and needs of children enrolled.
4. The director shall exchange information with parents concerning the program, its activities, and the adjustment of the child to the program.

5. Each child's cultural and ethnic background and primary language or dialect must be respected by the caregivers.
6. There must be a written daily plan of program activities for the children enrolled in the program.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-21. Minimum standards for the provision of snacks. Children in care for more than two and one-half hours shall be served a nutritious snack on a regular basis.

History: Effective December 1, 1981.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-22. Records.

1. A copy of this chapter must be kept on the premises.
2. The preschool educational facility operator shall maintain the following records:
 - a. The child's full name, birthdate, current home address, names of the child's parents or legal guardian, and the business and home telephone numbers where those individuals may be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child may not be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the preschool educational facility;
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is

physically able to take part in the child care program, and must be completed annually.

3. All records maintained with respect to children receiving child care services must be kept confidential, and access must be limited to staff members, the parents, or legal guardian of each child, and to:
 - a. Authorized county agency and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent or legal guardian. The preschool educational facility shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-23. Discipline - Punishment prohibited.. Disregard of any of the following disciplinary rules is grounds for denial or revocation.

1. The preschool educational facility must have a written policy regarding the discipline of children that must be interpreted to staff members before the preschool educational facility begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praise for appropriate behavior, and gentle physical restraint, such as holding. Children may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to or be accomplished by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age and circumstances. Any child must be in a safe, lighted, well-ventilated room within hearing of an adult. A child may not be isolated in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.

6. When addressing a child, or while in the presence of a child, staff members may not make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language.
7. A child may not be force-fed, unless medically prescribed and administered under a physician's care.
8. Deprivation of meals may not be used as a form of discipline or punishment.
9. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-24. [Reserved]

75-03-11-25. Minimum requirements for care of children with special needs. When children with special needs are admitted, there must be appropriate provisions to meet those needs.

1. When children with special needs are admitted, the preschool educational facility operator shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants.
2. The caregivers shall receive proper instructions as to the nature of the child's disability and potential for growth and development.
3. If the nature of the special need or the number of children with special needs warrants added care, the preschool educational facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11-26. Minimum provisions regarding emergency care for children. The preschool educational facility shall have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. Parents of enrollees must be advised of these plans. Plans must provide for:

1. The conspicuous posting of emergency response procedures.
2. The establishment of emergency response procedures.
3. The availability of at least one working flashlight.
4. Maintenance of at least one state department of health-approved first-aid kit in a designated location, inaccessible to children, yet readily accessible to caregivers.
5. A working telephone line immediately accessible to the caregivers with a list of emergency telephone numbers conspicuously posted adjacent to the telephone.
6. Responses to be made regarding minor illnesses when children are cared for in the preschool educational facility, and available medical consultation regarding special care and medication.
7. Written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent if a child in the preschool education facility requires medication.
 - a. Medications prescribed by a physician must be accompanied by the physician's written instructions as to dosage and storage, and labeled with the child's name and dated.
 - b. Medications must be stored in an area inaccessible to children, and medications stored in a refrigerator must be stored collectively in a spillproof container.
 - c. A written record of the administration of medication, including over-the-counter medication, to each child shall be kept. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records shall be included in the child's record.
8. The designation of a supervised temporary isolation area for a child who is too ill to remain in the group, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought, as necessary.
9. Provisions for emergency transportation, specifically that when a child is brought to another place for emergency care, the child is

accompanied by an adult who remains with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives.

10. Practices in which children with infectious or communicable conditions are excluded from the preschool educational facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the preschool educational facility must be obtained through consultation with local and state health department authorities.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11-27. Effect of conviction on licensure and employment.

1. A preschool educational facility operator may not be, and a preschool educational facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the preschool educational facility, an individual who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense, other than an offense identified in subdivision a, if the department in the case of a preschool educational facility operator, or the preschool educational facility operator in the case of an employee, determines that the individual has not been sufficiently rehabilitated.
2. The preschool educational facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section.

3. For purposes of subdivision b of subsection 1, the department in the case of a preschool educational facility operator, or a preschool educational facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-06.1

75-03-11-28. Child abuse and neglect determinations. If a probable cause determination or a decision that services are required under North Dakota Century Code chapter 50-25.1 exists, indicating that any child has been abused or neglected by a staff member, that individual shall furnish information satisfactory to the department, from which the department may determine the staff member's current ability to provide care free of abuse and neglect. The determination of current ability must be furnished to the preschool educational facility operator and to the regional director of the human service center or the regional director's designee for consideration and action on the preschool educational facility license.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

75-03-11-29. Allowable time periods for correction of deficiencies.

1. Deficiencies noted in a correction order must be corrected:
 - a. For a violation of section 75-03-11-09, or section 75-03-11-23, within twenty-four hours;
 - b. For a violation or deficiency requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a deficiency that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;

- d. For a deficiency that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other deficiencies, within twenty days.
- 2. All periods for correction begin on the date of receipt of the correction order by the licensee.
- 3. The regional supervisor of early childhood program licensing may grant an extension of additional time to correct deficiencies, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee and a showing that the need for the extension is created by unforeseeable circumstances and the licensee has diligently pursued the correction of the deficiency.
- 4. The operator shall furnish written notice of completion of the correction order action to the county agency. The correction order is effective until the county agency receives the notice.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07.2

75-03-11-30. Fiscal sanctions.

- 1. A fiscal sanction of twenty-five dollars per day must be assessed for each violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.
- 2. A fiscal sanction of fifteen dollars per day must be assessed for each violation of section 75-03-11-09 for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.
- 3. A fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day, after the allowable time for correction of deficiencies ends, that the preschool educational facility has not verified correction.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-07.4, 50-11.1-08

Law Implemented: NDCC 50-11.1-07.4

75-03-11-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal,

an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective January 1, 1999.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-08, 50-11.1-09